

regulated by law. The trust and confidence created by a testator in the selection of his executor is, in the case of an administration, *created by law*. The custodiary in his relation to the person and estate of the intestate is distinctly designated, first, to prevent litigation about the possession, and secondly, for the 'security of the estate,' and under our testamentary system, *this right cannot even be delegated.*"

WILLIAM PETERS
vs.
JEREMIAH T. SPEIGHTS. } MARCH TERM, 1853.

[SALE OF VESSEL IN FOREIGN PORT—PRIMAGE—ALLOWANCE TO SEAMEN DISCHARGED IN A FOREIGN PORT.]

THE complainant and defendant were joint owners of a vessel, which sailed from Baltimore to San Francisco, the former owning three-fourths, and the latter one-fourth thereof. The defendant was also the master of the vessel, and when she sailed from Baltimore held a power of attorney from complainant to sell his share when she arrived in San Francisco. This power and authority the complainant afterwards, and before the vessel arrived at her destination, revoked and transferred the same to other parties, his agents in San Francisco. These agents with the concurrence of defendant offered the vessel at public auction upon her arrival in San Francisco, and the defendant became the purchaser. **HELD—**

That under all the circumstances of the case the relation in which the parties stood at the time of the sale, did not preclude the defendant from becoming the purchaser of the vessel, the relation of trust and confidence between them having been destroyed by the complainant himself, by confiding the power to dispose of his interest in her to other parties.

The purchase of a ship in a foreign port by the master is generally to be considered as made for the benefit of the owners if they elect so to regard it; the incapacity of the master to purchase in such cases, arises from the relation of trust and confidence, which exists between him and the owners.

Primage is an allowance by the shippers to the master for his care bestowed upon their property on board the vessel, with which the owner of the vessel has no concern, and which the master receives to his own use, unless he has otherwise agreed with the owners.

As a general rule, a seaman is entitled to receive the whole of his stipulated wages for the entire intended voyage if he has faithfully performed his duty, and no disaster has rendered his services unproductive to his employer, but this rule as a general thing is inapplicable to the master.